

UNITED STATES DISTRICT COURT  
 DISTRICT OF MASSACHUSETTS  
 EASTERN DIVISION

CIVIL ACTION NO. 04-11934-GAO

|                   |   |
|-------------------|---|
| NOAH GREENBERG    | ) |
| Plaintiff         | ) |
|                   | ) |
| v.                | ) |
|                   | ) |
| TOWN OF FALMOUTH, | ) |
| AND GANNETT       | ) |
| FLEMING, INC.,    | ) |
| Defendants        | ) |

**GANNETT FLEMING'S CROSS-MOTION FOR SUMMARY JUDGMENT**

Now comes defendant and cross-plaintiff Gannett Fleming Engineers and Architects, PC (“Gannett” or “GF”),<sup>1</sup> through its counsel of record, and hereby submits the following Cross-Motion for Summary Judgment against Plaintiff Noah Greenberg (“plaintiff” or “Greenberg”), pursuant to U.S. District Court Local Rule 56.1. Gannett is also filing herewith, its Memorandum of Law in Opposition to plaintiff’s Motion for Summary Judgment and in support of Gannett’s Cross-Motion; its Separate Statement of Disputed and Undisputed Facts, with Exhibits; the supporting Affidavit of (Gannett Project Manager) Jeffrey Alberti, with Exhibits; and a proposed Order.

Gannett Fleming cross-moves for summary judgment on the grounds set forth in its Memorandum of Law filed herewith. Gannett has argued that plaintiff is not entitled to summary judgment because the substantial similarity issues in this case at least present questions of fact. In the alternative, should this Court find that “no reasonable juror” could find substantial

---

<sup>1</sup> The named Defendant in this case is Gannett Fleming, Inc. However, the contract between Gannett and the Town of Falmouth was with Gannett Fleming Engineers and Architects, PC, and that is the corporate entity that performed the design services on the subject job. Thus, Gannett Fleming, Inc. is a misnomer.

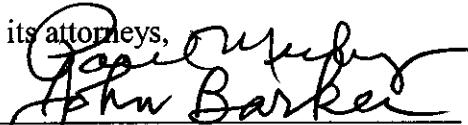
similarity between the two sets of architectural plans, such that Gannett is entitled to judgment as a matter of law, then Gannett respectfully requests summary judgment for defendants in this case. For examples of cases awarding summary judgment to defendants in copyright infringement cases, *see Yankee Candle Co., Inc. v. Bridgewater Candle Co., LLC*, 259 F.3d 25, 33-34 (1<sup>st</sup> Cir. 2001); *Kouf v. Walt Disney Pictures & Television*, 16 F.3d 1042, 1045 (9<sup>th</sup> Cir. 1994); *Hartman v. Hallmark Cards, Inc.*, 833 F.2d 117, 119-20 (8<sup>th</sup> Cir. 1987); *O'Neill v. Dell Publishing Co., Inc.*, 630 F.2d 685, 686-87 (1<sup>st</sup> Cir. 1980). Gannett respectfully asks this Court to deny plaintiff's Summary Judgment Motion, and/or grant defendants summary judgment.

**REQUEST FOR ORAL ARGUMENT**

Pursuant to U.S. District Court Local Rule 7.1(D), defendant Gannett hereby requests oral argument on both summary judgment motions.

The Defendant,  
GANNETT FLEMING, INC.

Dated: 2/16/06

By its attorneys,  
  
Gage Michienzie  
John C. Barker  
Paul Michienzie, Esq. – BBO #548701  
John C. Barker, Esq. – BBO #637406  
Michienzie & Sawin LLC  
745 Boylston Street, 5<sup>th</sup> Floor  
Boston, MA 02116-2636  
Tel. 617-227-5660